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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

IN RE: CHINESE-MANUFACTURED
DRYWALL PRODUCTS LIABILITY
LITIGATION

CIVIL DOCKET NO. 09-MD-2047-EEF-JCW
NEW ORLEANS, LOUISIANA
THURSDAY, JANUARY 20, 2011, 9:00 A.M.

09:01AM

THIS DOCUMENT RELATES TO
ALL CASES

TRANSCRIPT OF STATUS CONFERENCE PROCEEDINGS
HEARD BEFORE THE HONORABLE ELDON E. FALLON
UNITED STATES DISTRICT JUDGE

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25 PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY. TRANSCRIPT
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P-R-O-C-E-E-D-I-N-G-S

THURSDAY, JANUARY 20, 2011

M O R N I N G S E S S I O N

(COURT CALLED TO ORDER)

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THE DEPUTY CLERK: Everyone rise.

THE COURT: Be seated, please. Good morning, ladies and gentlemen. Call the case, please.

THE DEPUTY CLERK: MDL No. 2047, *In Re: Chinese Drywall*.

THE COURT: Would counsel make their appearances for the record, please.

MR. LEVIN: Yes, sir. Arnold Levin for the Plaintiffs' Steering Committee, sir.

THE COURT: Who is for the defendants?

MR. MILLER: I'm coming. I'm taking the long way. Kerry Miller on behalf of the Defense Steering Committee, Your Honor.

THE COURT: We're here today for our monthly status conference. I have a number of people on the phone, so please use the microphones. I apologize for the inconvenience this morning with the security. Things have changed a bit since Arizona, and we have some increased security concerns.

I met with the parties, the liaison and lead

09:25AM 1 counsel, and discussed with them preliminarily the proposed
09:25AM 2 agenda and the motions. I'll first take the proposed agenda, and
09:25AM 3 if there are any motions, we'll take that after we have a short
09:25AM 4 break.

09:25AM 5 First, with the proposed agenda, the pretrial
09:25AM 6 orders.

09:25AM 7 MR. LEVIN: There is nothing on pretrial orders,
09:25AM 8 Your Honor, other than pretrial order 8-A was entered by the
09:25AM 9 Court establishing the Plaintiffs' Steering Committee and two new
09:25AM 10 members.

09:25AM 11 THE COURT: One new matter, I had received a number of
09:25AM 12 requests by various corporations, mom-and-pop, for lack of a
09:25AM 13 better term, corporations which were installers or builders, and
09:26AM 14 they have gone bankrupt or have limited assets, and they've filed
09:26AM 15 motions or inquired about the pro se representation.

09:26AM 16 As you know, we can't have pro se representation of
09:26AM 17 a corporation -- that's not allowed -- but at the same time,
09:26AM 18 these corporations are now either nonexistent or in bankruptcy or
09:26AM 19 closed, and I don't wish to impose any additional fees on these
09:26AM 20 individuals.

09:26AM 21 So what I'm going to do is direct them to liaison
09:26AM 22 counsel for the builders, and then we'll see how many there are,
09:26AM 23 and perhaps we can group them in a group and then appoint
09:26AM 24 somebody to represent that group so that we minimize any costs
09:26AM 25 and, at the same time, satisfy our requirements under the law.

09:26AM 1 Property inspections is the next item.

09:26AM 2 MR. LEVIN: I believe there is nothing, really, on
09:26AM 3 property inspections, but I think Your Honor wanted to make a
09:27AM 4 note of the remediation program.

09:27AM 5 THE COURT: Yes, I did. There are a couple of issues
09:27AM 6 here. We've had a lot of property inspections, and that's part
09:27AM 7 of the settlement program with Knauf that's gone into affect, or
09:27AM 8 at least the pilot program, and the inspections have been made
09:27AM 9 and certain documents have been received, but we haven't had any
09:27AM 10 remediation work, and that's where we have to focus on, to get
09:27AM 11 remediation work on the ground.

09:27AM 12 There is a lot happening in this litigation. Those
09:27AM 13 in this room, perhaps, know what's happening -- a lot of action
09:27AM 14 going back and forth -- but the public doesn't know, and the
09:27AM 15 homeowners don't know because they have just seen their homes
09:27AM 16 inspected, and they are waiting for the next step. Well, it's
09:27AM 17 time for them to get some help with their particular homes. So
09:28AM 18 I've tried to expedite that in two ways:

09:28AM 19 One is we have a number of homes in the Slidell
09:28AM 20 area. They have been inspected. They are ready to go. So I've
09:28AM 21 ordered mediation on Monday for those particular homes, and we
09:28AM 22 will hopefully wrap up those 20 and start the program
09:28AM 23 immediately.

09:28AM 24 I've also asked Knauf to pick some homes that are
09:28AM 25 ready and to put those individuals at the top of the list, if

09:28AM 1 they can move from their homes as quickly as possible, because
09:28AM 2 they have a certain period of time when they can move from the
09:28AM 3 home and allow the remediation to commence. Some individuals are
09:29AM 4 ready to move tomorrow or the next day. In that type situation,
09:29AM 5 then perhaps they should go to the head of the class and get
09:29AM 6 their homes remediated immediately. So we're working on that
09:29AM 7 program to at least get some things done.

09:29AM 8 The next item is plaintiff and defendant profile
09:29AM 9 forms. Anything there?

09:29AM 10 MR. LEVIN: There is nothing new there, Your Honor.

09:29AM 11 THE COURT: Preservation order anything?

09:29AM 12 MR. LEVIN: Nothing new.

09:29AM 13 State/federal coordination Ms. Barrios will handle.

09:29AM 14 THE COURT: Okay.

09:29AM 15 MR. LEVIN: Most people don't know it, but she does a
09:29AM 16 lot more than this in the litigation.

09:29AM 17 THE COURT: I know she does.

09:29AM 18 MS. BARRIOS: Thank you, Mr. Levin.

09:29AM 19 Good morning, Judge, Dawn Barrios for the
09:29AM 20 State/Federal Committee. I've brought today for Your Honor, and
09:29AM 21 I'll give to all the parties, a CD containing all of the remands
09:29AM 22 through CTO Number 20. Besides these state court cases that are
09:29AM 23 listed in the joint report, I would like to bring to Your Honor's
09:29AM 24 attention a couple of other matters.

09:29AM 25 I've been informed very kindly by Taishan's

09:30AM 1 national counsel of all of the cases in state court which have
09:30AM 2 been served by Taishan. There is three cases: One is in CDC;
09:30AM 3 the plaintiffs' attorney is Mr. Jim Gardener, and he's working
09:30AM 4 with the Plaintiffs' Steering Committee. The other is Lenoir
09:30AM 5 Homes in Miami, Dade County, and, of course, Ms. Hilarie Baas is
09:30AM 6 working with the MDL as well; and the other is a case in Alabama,
09:30AM 7 *Alexander v. Building Materials*, and Mr. Long and Mr. Serpe have
09:30AM 8 been in touch with the plaintiffs' attorney there. So we have
09:30AM 9 the coordination on all cases that Taishan has been served in.

09:30AM 10 The other matter --

09:30AM 11 THE COURT: In that particular matter, I've been
09:30AM 12 discussing these issues with the state courts in those cases as
09:30AM 13 well as other cases, and what we're trying to do is coordinate,
09:30AM 14 and it's been very helpful to me to have the state courts express
09:31AM 15 a willingness to work with the MDL, and, of course, I am more
09:31AM 16 than willing to work with them to coordinate our schedule with
09:31AM 17 their busy schedules.

09:31AM 18 What we're trying to do is to have discovery
09:31AM 19 proceed at the same time, and we're looking into the possibility
09:31AM 20 of having class cert motions at the same time so that either they
09:31AM 21 can come over here or monitor it by either television hookup or
09:31AM 22 telephonic hookup, and we can do our class cert hearings one time
09:31AM 23 so that you don't have to have a class cert hearing here in
09:31AM 24 federal court and then next week or next month have the same
09:31AM 25 class cert hearing in state court. So we're trying to coordinate

09:31AM 1 that, and hopefully we'll be able to do it. I think that's good
09:31AM 2 for the litigants. I know it's good for the attorneys, but
09:31AM 3 hopefully it will be also efficient for the various courts
09:32AM 4 involved.

09:32AM 5 MS. BARRIOS: Yes, Your Honor, the various state judges
09:32AM 6 have been accommodating and very responsive whenever I seek some
09:32AM 7 further information.

09:32AM 8 As far as Virginia goes, Mr. Serpe has reported
09:32AM 9 that Judge Hall has consolidated all the *Chinese Drywall* cases
09:32AM 10 before her. There is a declaratory judgment action pending in
09:32AM 11 Virginia federal court on coverage issue. There is an appeal on
09:32AM 12 the homeowners coverage issue, which will be heard in March, and
09:32AM 13 on December 6th of last year, Venture Supply is attempting
09:32AM 14 service on Taishan through the Hague Convention.

09:32AM 15 We also found out through some media coverage that
09:32AM 16 there are some Colorado cases, so I reached out and discovered
09:32AM 17 that both of the Colorado cases pending in state court are just
09:32AM 18 coverage issues between the insurer.

09:32AM 19 Thank you, Your Honor.

09:32AM 20 THE COURT: Thank you very much.

09:32AM 21 We have motions in the MDL. I'll take those after
09:32AM 22 our hearing.

09:32AM 23 Any discovery issues?

09:32AM 24 MR. LEVIN: Just that with regard to the motions,
09:33AM 25 Your Honor, you'll take our Motion to Compel as against Taishan

09:33AM 1 at the close of the hearing?

09:33AM 2 THE COURT: Right. Yes.

09:33AM 3 MR. LEVIN: The report --

09:33AM 4 THE COURT: Discovery issues.

09:33AM 5 MR. LEVIN: -- is that we have taken the deposition of

09:33AM 6 Isabel Knauf in Hong Kong and the deposition of Grunke,

09:33AM 7 Mr. Grunke, in Frankfurt, and we're discussing additional

09:33AM 8 depositions but they have not been scheduled. We can take one

09:33AM 9 thing out of order. We took the deposition of Mark Norris from

09:33AM 10 the Knauf entities in Hong Kong. It did not finish on time.

09:33AM 11 It's not important as to why. We're beyond that. We're going to

09:33AM 12 probably finish the deposition by telephonic hookup. Speaking

09:33AM 13 for the plaintiffs, I have no more than a half hour of questions

09:33AM 14 there.

09:33AM 15 THE COURT: If something pops up, get me on the line.

09:33AM 16 Let's not terminate the deposition. Get me on the line, or I'll

09:34AM 17 monitor the deposition, and if any issues come up, I'll rule

09:34AM 18 immediately either telephonically, or we can set up television

09:34AM 19 depositions, if that's of interest to you also.

09:34AM 20 MR. LEVIN: Additionally, Your Honor, if I may interject

09:34AM 21 here, we're in the process of scheduling jurisdictional

09:34AM 22 depositions as to Taishan entities in Hong Kong, and they've

09:34AM 23 offered them in the first week of April. We feel that this train

09:34AM 24 is leaving the station, and we want them to catch up with -- we

09:34AM 25 don't want them to be the caboose. We would like to take those

09:34AM 1 depositions earlier than that, but that will be part of the
09:34AM 2 Motion to Compel.

09:34AM 3 THE COURT: Okay. Anything on Freedom of Information
09:34AM 4 Act?

09:34AM 5 MR. LEVIN: Nothing new, sir.

09:34AM 6 THE COURT: Trial settings in federal court. I've
09:34AM 7 talked to the parties from Interior Exterior. I've set the weeks
09:35AM 8 of May 23rd, June 20th, July 18th, for trials either in one or
09:35AM 9 more of the cases involving Interior Exterior. I'm meeting with
09:35AM 10 them in the near future, as well as with the plaintiffs, to talk
09:35AM 11 about the scheduling orders and the cases that will be set for
09:35AM 12 trial on those particular dates.

09:35AM 13 One issue that I do want to address is that in some
09:35AM 14 of these matters there are insurance issues, which is also on our
09:35AM 15 list here, and the issue that the insurance company is facing is
09:35AM 16 both substantive as well as procedural. They are taking the
09:36AM 17 position that they are not formally or shouldn't be formally
09:36AM 18 before the Court because the Court has no personal jurisdiction
09:36AM 19 or jurisdiction over them. There are also some substantive
09:36AM 20 matters.

09:36AM 21 I really would like to get to some of the
09:36AM 22 substantive before we deal with jurisdictional issues. What I'm
09:36AM 23 trying to do and what I'm willing to do is to reserve their
09:36AM 24 rights. I need their input for some of the substantive matters,
09:36AM 25 I need their input to make some decisions that I think are

09:36AM 1 significant in the case, and they need to participate in that,
09:36AM 2 but I don't want them to waive or give up any of their rights to
09:36AM 3 take the position that the Court has no jurisdiction over them.

09:36AM 4 So I want to give them and make sure that they have
09:36AM 5 some comfort in the fact that by giving me some of their comments
09:36AM 6 about the substantive issues, they are not waiving their
09:36AM 7 procedural rights. They are just giving me the benefit of their
09:37AM 8 views on some substantive matters, and I'll preserve any of their
09:37AM 9 rights to take the position that the Court has no jurisdiction
09:37AM 10 over them. So I want to make sure that they understand that.
09:37AM 11 I'll have the parties stipulate to that effect, if that's
09:37AM 12 necessary.

09:37AM 13 MR. LEVIN: We certainly will stipulate to that on
09:37AM 14 behalf of the Plaintiffs' Steering Committee.

09:37AM 15 THE COURT: Filings in the MDL.

09:37AM 16 MR. LEVIN: Nothing new, Your Honor.

09:37AM 17 THE COURT: Default judgments, anything?

09:37AM 18 MR. LEVIN: Well, we have that one default judgment that
09:37AM 19 we're going to argue after the conference.

09:37AM 20 THE COURT: Right. I talked about insurance issues. Is
09:37AM 21 there anything more on that?

09:37AM 22 MR. LEVIN: Yes. Your Honor had a ruling in the
09:37AM 23 homeowners litigation. Despite our strenuous disagreement with
09:37AM 24 Your Honor's ruling, we've decided to withdraw the cases, and
09:38AM 25 we're in the process of getting permission from the individual

09:38AM 1 plaintiff's counsel, we've set up a procedure where, if they want
09:38AM 2 to object to the dismissal of their case with prejudice, they
09:38AM 3 notify us so that we can notify the Court. I believe they will
09:38AM 4 be dismissed, sir.

09:38AM 5 THE COURT: Okay. Fine. There is also, FCCI has
09:38AM 6 indicated that they intend to file a request for an interlocutory
09:38AM 7 appeal when I issue the judgment. I duly note that, and when I
09:38AM 8 do issue the judgment I'll let them make their position known and
09:38AM 9 I'll hear from them. I don't need any oral argument on it, but
09:38AM 10 I'll hear from the plaintiffs and then I'll make that decision.

09:38AM 11 Service of pleadings electronically.

09:38AM 12 MR. LEVIN: There's nothing new on that, Your Honor.

09:38AM 13 One thing that is new is we have been able to serve
09:38AM 14 the Knauf entities by serving Mr. Miller, which expedites things,
09:39AM 15 and it's working. They got a lot of paper in the last month. We
09:39AM 16 would like to have that agreement with Taishan.

09:39AM 17 THE COURT: Yes. I think that, frankly, would be
09:39AM 18 helpful, because one problem that we had to get over initially in
09:39AM 19 this particular case is the census of the case. When we started
09:39AM 20 out, neither side, neither the plaintiffs nor the defendants,
09:39AM 21 just looking at it from a two-sided issue and all of the people
09:39AM 22 associated with both of those sides, really didn't have a feeling
09:39AM 23 for the census. How many cases are we dealing with? How many
09:39AM 24 board feet are we dealing with, and where are they? How many
09:39AM 25 claims are there? Things of that sort.

09:39AM 1 So it wasn't an easy thing to work through, but in
09:40AM 2 this process, with Knauf's agreement, I think we were, we were
09:40AM 3 able to expedite the matter, and they were better able to get a
09:40AM 4 census of their litigation, and I think it moved the case faster
09:40AM 5 than it would have otherwise.

09:40AM 6 MR. MILLER: Yes, Your Honor, that's right, and I would
09:40AM 7 recommend the process. A compromise that my client reached with
09:40AM 8 the PSC was to accept service so that they don't have to go
09:40AM 9 through the time and the expense of doing that, in exchange for
09:40AM 10 the appointment of BrownGreer as a Special Master to confirm
09:40AM 11 product ID.

09:40AM 12 THE COURT: Right.

09:40AM 13 MR. MILLER. So that we could further refine the census.
09:40AM 14 And I think there is a mutuality of interest there.

09:40AM 15 THE COURT: Yes, I think that that's a key thing. I
09:40AM 16 don't think it's fair for a defendant to come into the litigation
09:40AM 17 when they don't even know their total exposure, and so I have to
09:40AM 18 recognize that. This is a way of dealing with it, and I think
09:41AM 19 that in a case of this sort it's helpful to all sides if we get
09:41AM 20 our hands around it and find out what the total census is. It
09:41AM 21 worked with Knauf, and hopefully it will work with Taishan.

09:41AM 22 MR. LEVIN: Thank you, Your Honor.

09:41AM 23 THE COURT: Master complaints, anything?

09:41AM 24 MR. LEVIN: Well, we're still filing omnibus complaints.
09:41AM 25 The master complaint is not ready until all the interventions are

09:41AM 1 in place.

09:41AM 2 THE COURT: Yes, this case has posed a challenge for
09:41AM 3 pleadings, and they have to invent things that you don't find in
09:41AM 4 the Federal Rules, like the omnibus complaint. We had to figure
09:41AM 5 out a way of having claims grouped. The parties had to figure
09:41AM 6 out a way of dealing with that, and both sides, all of the
09:41AM 7 interested parties suggested that we deal with it in the form of
09:42AM 8 an omnibus complaint so that all of the claims that are of the
09:42AM 9 same type we can put into an omnibus complaint. That helps us
09:42AM 10 also with the census.

09:42AM 11 Once we get everybody into the litigation, then
09:42AM 12 perhaps a master complaint may or may not be in order to group
09:42AM 13 the issues so that we're dealing with issues one time as opposed
09:42AM 14 to a number of times.

09:42AM 15 All of these things are procedural, they are not
09:42AM 16 substantive, but the procedure makes it more efficient and
09:42AM 17 effective, and that's what we have been doing.

09:42AM 18 Special Master.

09:42AM 19 MR. LEVIN: I think I've addressed the master, unless
09:42AM 20 you have any other questions.

09:42AM 21 THE COURT: No, I think that that was very helpful to us
09:42AM 22 in this particular case. BrownGreer is very efficient, and they
09:42AM 23 will be able to be of great assistance in that regard.

09:43AM 24 MR. LEVIN: With regard to the class action complaint on
09:43AM 25 the indeterminate defendants, we have a motion for preliminary

09:43AM 1 default pending. We have no entries of appearance for them;
09:43AM 2 nevertheless, it appears that Taishan's counsel tells us he has
09:43AM 3 an interest, even though there is no papers filed, no entry of
09:43AM 4 appearance, and I believe Your Honor deferred that motion till
09:43AM 5 after the conference.

09:43AM 6 THE COURT: Yes. I'll deal with that after the
09:43AM 7 conference.

09:43AM 8 Knauf Gips personal jurisdiction matter.

09:43AM 9 MR. LEVIN: We're dealing with that, Your Honor.

09:43AM 10 THE COURT: And no frequently asked questions? No
09:43AM 11 additional ones?

09:43AM 12 As all of us know, we've established a web site for
09:43AM 13 this particular case, and when I get questions from the people
09:43AM 14 who participate, or at least pull up the web site, and we then
09:43AM 15 post those frequently asked questions on a portion of the web
09:44AM 16 site so that individuals can go to that area and click on it and
09:44AM 17 find the answers to their questions. If they have a new
09:44AM 18 question, they can then call in, and hopefully I'll put that up
09:44AM 19 as a frequently asked question also.

09:44AM 20 MR. LEVIN: The omnibus class action complaints, they
09:44AM 21 have been filed and intervention complaints have been filed, and
09:44AM 22 since the last conference, the PSC has filed an Omnibus 7
09:44AM 23 complaint against the Taishan entities, which are growing because
09:44AM 24 we have determined that a lot of the markings that we couldn't
09:44AM 25 figure out who the manufacturer was -- this is the problem with

09:44AM 1 the default judgments, too -- are Taishan entities, and we've
09:44AM 2 moved those plaintiffs from the indeterminate defendant
09:44AM 3 complaint, Omni 3, to Omni 7, along with additional Taishan
09:45AM 4 plaintiffs, which there are substantial.

09:45AM 5 The PSC is now in the process of formulating an
09:45AM 6 Omni 8 complaint, which is against the Knauf entities and some
09:45AM 7 builders with them. The plaintiffs are predominantly Texas
09:45AM 8 residents; although, there are residents in Louisiana and
09:45AM 9 Florida, but that will be predominantly Texas residents.

09:45AM 10 THE COURT: Yes, we're getting some cases from Texas,
09:45AM 11 and also, I understand there are a few cases in Colorado now and
09:45AM 12 in other states. We have about 15 or 20 states that are involved
09:45AM 13 in this litigation so far.

09:45AM 14 As you can see, the scope of the litigation is
09:45AM 15 rather daunting. I have in this particular case nearly a
09:45AM 16 thousand defendants. A thousand defendants. We may have about
09:45AM 17 20,000 or so plaintiffs. The case presents challenges because I
09:45AM 18 have 1,200 lawyers in this particular case. We have a thousand
09:46AM 19 defendants, 20,000 or so plaintiffs, and 1,200 lawyers. So you
09:46AM 20 can see the challenge that that poses from a logistical
09:46AM 21 standpoint, an organizational standpoint.

09:46AM 22 The cases of this magnitude could not be handled
09:46AM 23 without talented lawyers on each side, and it's been very helpful
09:46AM 24 to me in this particular case to have quality lawyers presenting
09:46AM 25 this particular case. It's been able to be managed because of

09:46AM 1 their efforts.

09:46AM 2 Matters set for hearing. Litigation expense fund.

09:46AM 3 MR. LEVIN: That's just staying there, Your Honor.

09:46AM 4 We're not pushing it at this point.

09:46AM 5 THE COURT: I did the appointment of the plaintiffs'

09:46AM 6 committee.

09:46AM 7 Mediation. What is the status of the *Banner*

09:47AM 8 matter? Anything there?

09:47AM 9 MR. LEVIN: Well, somebody will stand up, if I'm

09:47AM 10 speaking out of -- that I shouldn't be.

09:47AM 11 In a public conference with Your Honor we went

09:47AM 12 through, two weeks ago, a term sheet that we proposed. We

09:47AM 13 reduced it to writing. We sent it to Banner. We received a

09:47AM 14 response from Banner last night. I've got to take it up with my

09:47AM 15 plaintiffs' committee. We're moving the ball very close. Within

09:47AM 16 field goal range.

09:47AM 17 THE COURT: Okay.

09:47AM 18 MR. LEVIN: Probably, we could, even on the fourth down,

09:47AM 19 go for a touchdown, but there is a few things that we have to do,

09:47AM 20 that we have to clear up, and until we do that, I don't think

09:47AM 21 Banner wants me to go any further.

09:48AM 22 THE COURT: Okay. Fine, just get it to me by Monday or

09:48AM 23 Tuesday --

09:48AM 24 MR. LEVIN: Absolutely, Your Honor.

09:48AM 25 THE COURT: -- so that I can hear from you as to that.

09:48AM 1 Hopefully that will resolve.

09:48AM 2 Class certification motions?

09:48AM 3 MR. LEVIN: The *Germano* motion, which is a Taishan
09:48AM 4 motion, we're deferring because we believe we should deal with
09:48AM 5 the jurisdictional issues, the depositions, the documents, the
09:48AM 6 motions to compel, and put that on the back table.

09:48AM 7 The three other motions for class certification,
09:48AM 8 INEX, Knauf, Banner, Your Honor has scheduled them for hearings
09:48AM 9 June 1, 2, and 3. We have a schedule for discovery. We're
09:48AM 10 meeting next week on the scope of discovery. I don't think we'll
09:48AM 11 have a problem there. Most of -- we all know what class
09:48AM 12 discovery is, and there will be a substitution of class
09:48AM 13 representative because one of the class representatives qualified
09:48AM 14 for the pilot program. We lost him, but we'll put somebody else
09:49AM 15 in.

09:49AM 16 THE COURT: Okay. All right. If any issues come up
09:49AM 17 there, get to me on the phone, and I'll hear from both sides and
09:49AM 18 resolve the issues, as sometimes problems crop up with class
09:49AM 19 certification discovery. Let's not bog down in that.

09:49AM 20 Pretrial order 1H, anything on that?

09:49AM 21 MR. LEVIN: Nothing sir.

09:49AM 22 THE COURT: How about the pilot program, any status on
09:49AM 23 the pilot program?

09:49AM 24 MR. LEVIN: Greg?

09:49AM 25 MR. WALLANCE: Good morning, Your Honor,

09:49AM 1 Gregory Wallance, Kaye Scholer, for the Knauf entities.

09:49AM 2 Your Honor, I think we've made very good progress,
09:49AM 3 off to a good start. We have qualified about 175 homes for the
09:49AM 4 program. That means that they -- those homes have now been given
09:49AM 5 over to our contractor, Moss and Associates. Approximately 80 of
09:49AM 6 those homes have been inspected and bid out by subcontractors.
09:50AM 7 We're assembling, for those 80 homes, work authorizations, and in
09:50AM 8 some cases the work authorizations have gone out for review by
09:50AM 9 the homeowners, their counsel, and by Knauf. Once those
09:50AM 10 authorizations are signed, then it's just a matter of scheduling
09:50AM 11 the work, giving the owner -- if the owner is still occupying the
09:50AM 12 house -- move-out notice and then commencing construction work.

09:50AM 13 We are hopeful that between the efforts we're
09:50AM 14 making on the Slidell homes and some very, very positive
09:50AM 15 discussions that we had yesterday with Your Honor and with the
09:50AM 16 PSC regarding moving forward on at least those that are closest
09:50AM 17 to starting work, particularly where the homeowner may no longer
09:50AM 18 be occupying, then I'm hopeful that within a very short time
09:50AM 19 you're going to see some shovels flying and some hammers, and I
09:50AM 20 think there is going to be some visible results of the very, very
09:50AM 21 substantial effort that we've all made over the last six or
09:51AM 22 seven months.

09:51AM 23 THE COURT: I appreciate your work on it. It's been
09:51AM 24 very helpful to have you coordinate the matter. I would suggest
09:51AM 25 that, as we go along, oftentimes you're dealing with a number of

09:51AM 1 plaintiff lawyers and a number of plaintiff counsel, and we
09:51AM 2 really need from the Plaintiffs' Steering Committee the
09:51AM 3 designation of one person who can handle that, and we need that
09:51AM 4 person to be the expeditor so that you can go to that person and
09:51AM 5 say, this is a problem I have in this home in Florida or this
09:51AM 6 home in Virginia or the home in Louisiana or Mississippi, and
09:51AM 7 then that expeditor can handle the matter, as opposed to your
09:51AM 8 trying to flesh out who is the lawyer in charge of that
09:51AM 9 particular case.

09:51AM 10 Also from your standpoint, you're going to have
09:51AM 11 some people that need to answer some homeowners who have
09:52AM 12 complaints or some suggestions or whatever it is, and they need
09:52AM 13 to talk to somebody, and it's not going to be enough that they
09:52AM 14 can call "the company." They need some name that they can call,
09:52AM 15 e.g., call John or call Paul or something of that sort, so that
09:52AM 16 that person is responsible for handling that complaint.

09:52AM 17 MR. WALLANCE: Your Honor, we're going to put that in
09:52AM 18 place, and I am speaking to Moss this afternoon, and we will be
09:52AM 19 providing a name tomorrow to the PSC to furnish to the attorneys
09:52AM 20 representing the homeowners.

09:52AM 21 And, Your Honor, if I may, I don't want to leave
09:52AM 22 the impression that we are content with 175 homes or that we're
09:52AM 23 content ultimately with the 300 homes that are the intended
09:52AM 24 target of the pilot program. We're in the process of laying the
09:52AM 25 groundwork to expand the pilot program well beyond several

09:52AM 1 hundred homes.

09:52AM 2 There are a number of mediations, negotiations,
09:52AM 3 discussions alluded to earlier that, while there are a lot of
09:53AM 4 moving parts, if they all come together, I think over the course
09:53AM 5 of the next 6 to 12 months you're going to see a very rapid
09:53AM 6 expansion of the pilot program.

09:53AM 7 In that regard, I would urge all of the attorneys
09:53AM 8 who are listening in on this who represent homeowners who haven't
09:53AM 9 furnished through the PSC documentation that would qualify their
09:53AM 10 homes for this program to do so, and we will act on it. We have
09:53AM 11 engaged with every attorney who has furnished us that kind of
09:53AM 12 documentation. There is a process to go through, but we're
09:53AM 13 committed to that engagement.

09:53AM 14 MR. LEVIN: We basically agree with everything
09:53AM 15 Mr. Wallance has said, but 6 to 12 months is not going to do it.
09:53AM 16 We've got to move a lot faster than that. We've got people that
09:53AM 17 are out of their homes, can't get into their homes, and they've
09:53AM 18 waited already 18 months, and 12 months just doesn't do it,
09:53AM 19 Your Honor.

09:53AM 20 THE COURT: No, I agree with that. We do have to move
09:54AM 21 faster, and I think that Greg sees that. I think what he was
09:54AM 22 saying, that hopefully the whole matter can be resolved in a very
09:54AM 23 short time.

09:54AM 24 MR. WALLANCE: Your Honor, I'm talking about -- I'm
09:54AM 25 talking about more than a few hundred homes when I use that time

09:54AM 1 period. I'm talking about --

09:54AM 2 THE COURT: Yes, right. You're talking about the whole
09:54AM 3 thing.

09:54AM 4 MR. WALLANCE: -- about the substantial critical mass
09:54AM 5 that will break, if you will allow me to use the expression,
09:54AM 6 break the back on the case, at least as against the Knauf
09:54AM 7 entities.

09:54AM 8 THE COURT: Yes, I see in the future that there is an
09:54AM 9 indication that we may be coming into a closing aspect, or end
09:54AM 10 game at least from Knauf, and that's important for the other
09:54AM 11 defendants to kind of take a look at because they have now a
09:54AM 12 concrete program that they can look at, they should know their
09:54AM 13 census, and the insurance companies that are behind them should
09:55AM 14 be able to evaluate their situation, and hopefully we can move
09:55AM 15 this entire litigation to completion.

09:55AM 16 MR. WALLANCE: Thank you, Your Honor.

09:55AM 17 THE COURT: Thank you very much.

09:55AM 18 MR. LEVIN: Regarding the new items, sir.

09:55AM 19 THE COURT: Yes, the new items, stipulation of service.
09:55AM 20 We've talked about that.

09:55AM 21 MR. MILLER: On that point, I'm sorry, Your Honor, I
09:55AM 22 forgot to mention earlier, the deadline to get the indicia in to
09:55AM 23 BrownGreer is February the 4th. It's in the order, but I just
09:55AM 24 want to highlight it while we're here.

09:55AM 25 THE COURT: Right, okay.

09:55AM 1 MR. LEVIN: Along those lines, what has to go to
09:55AM 2 BrownGreer is as follows: Much of the indicia has been sent to
09:55AM 3 our office. It was sent pursuant to a court order. We are in
09:55AM 4 the process of getting that in order to deliver to BrownGreer.
09:55AM 5 So the plaintiffs' counsel do not have to duplicate what they've
09:55AM 6 given us. That does not mean that it's been determined to be
09:55AM 7 adequate. They should supplement, if they have to supplement,
09:56AM 8 and I encourage them to supplement with BrownGreer.

09:56AM 9 Knauf accumulated a lot of indicia with regard to
09:56AM 10 the pilot program, lawyers that attempted to schedule mediations,
09:56AM 11 and gave them to Knauf and Knauf's counsel. That information is
09:56AM 12 not being turned over by Knauf because there was no court order
09:56AM 13 involved in that. And as to that particular indicia, they
09:56AM 14 must -- the plaintiff's attorney must send that to BrownGreer.

09:56AM 15 If there are clients who are not on an Omni
09:56AM 16 complaint as yet, they can send it to BrownGreer after the Omni
09:56AM 17 complaint is filed, or they can expedite it by sending it to
09:56AM 18 BrownGreer and noting that the plaintiff is not on an Omni
09:56AM 19 complaint as yet, but it's very important that all plaintiff's
09:57AM 20 counsel know that date and get this information in because
09:57AM 21 this -- getting this information in is going to advance the wall
09:57AM 22 to the ultimate resolution of this case.

09:57AM 23 THE COURT: All right. So if anybody and any plaintiff
09:57AM 24 counsel needs some clarification on that, get the liaison or lead
09:57AM 25 counsel, and they will be able to meet with you and consult

09:57AM 1 further with you on that.

09:57AM 2 Our next status conference is February 23rd, and
09:57AM 3 I'll meet with the liaison and lead counsel early on and then
09:57AM 4 have the open matter at 9 o'clock.

09:57AM 5 I'll take a quick break here and return for
09:57AM 6 motions. Anything from anybody that I haven't talked about?
09:57AM 7 I've had these matters in open court for that reason.

09:57AM 8 I've also, as I mentioned, made some reappointments
09:57AM 9 and new appointments to the committee. Those new individuals who
09:57AM 10 are newly on the Plaintiff's Steering Committee, I welcome you to
09:58AM 11 the litigation. I look forward to working with you on this
09:58AM 12 matter and urge that you be conscious of team effort. I think
09:58AM 13 that that makes it work.

09:58AM 14 With class action individuals, the Court is
09:58AM 15 responsible under Rule 23 to pick a qualified person. That
09:58AM 16 individual generally carries the ball in a class action. An MDL
09:58AM 17 is little different. There are both class actions and multiple
09:58AM 18 cases involved. You need talented people, just as you do in
09:58AM 19 class actions, but in addition, the MDL needs individuals who
09:58AM 20 pull the wagon together in teams, and that is very critical, and
09:58AM 21 I know that this group is aware of that and will continue to do
09:58AM 22 so.

09:58AM 23 MR. LEVIN: Thank you, Your Honor.

09:58AM 24 THE COURT: I'll be back in 10 minutes. Court will
09:58AM 25 stand in recess.

10:00AM

1

(WHEREUPON, at 10:00 a.m. the status conference was

10:00AM

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concluded.)

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REPORTER'S CERTIFICATE

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I, Cathy Pepper, Certified Realtime Reporter, Registered

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Merit Reporter, Registered Professional Reporter, Certified Court

10

Reporter of the State of Louisiana, Official Court Reporter for

11

the United States District Court, Eastern District of Louisiana,

12

do hereby certify that the foregoing is a true and correct

13

transcript, to the best of my ability and understanding, from the

14

record of the proceedings in the above-entitled and numbered

15

matter.

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s/Cathy Pepper

19

Cathy Pepper, CRR, RMR, CCR

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Official Court Reporter

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United States District Court

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